

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION

CASE NO. **05-80339**

FLORIDA WILDLIFE FEDERATION, a  
Florida not-for-profit corporation; and  
SIERRA CLUB, INC., a not-for-profit  
corporation,

Plaintiffs,

v.

UNITED STATES ARMY CORPS OF  
ENGINEERS, and COLONEL ROBERT  
M. CARPENTER, District Engineer, in his  
official capacity,

Defendants.

**CIV-MIDDLEBROOKS**

MAGISTRATE JUDGE  
JOHNSON

FILED BY: \_\_\_\_\_ D.C.  
2005 APR 21 AM 9:27  
CLERK OF COURT  
S.D. OF FLORIDA

---

**COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiffs, **FLORIDA WILDLIFE FEDERATION** and **SIERRA CLUB**, (collectively  
"Plaintiffs"), by and through their undersigned counsel, hereby sue the **UNITED STATES ARMY  
CORPS OF ENGINEERS**, and **COLONEL ROBERT M. CARPENTER**, District Engineer, for  
improper agency action under the **Administrative Procedures Act**, 5 U.S.C. §706 ("APA"),  
violations of the **National Environmental Policy Act**, ("NEPA") 42 U.S.C. §4321, *et seq.*, and  
violations of the **Federal Clean Water Act**, ("CWA") 33 U.S.C. §1344 *et seq.* and the **Rivers And  
Harbors Act of 1899**, 33 U.S.C. §403, and state:

1. This is an action for declaratory judgment and injunctive relief. The Plaintiffs are challenging the United States Corps of Engineers' ("Corps") decision to issue a 404 Permit, **No.: SAJ 2004-2859 (IP-AAZ)** (the "PERMIT"), pursuant to the Federal Clean Water Act and the Rivers And Harbors Act of 1899 for a project known as the Palm Beach County Biotechnology Research Park - SCRIPPS (the "PROJECT"). This action also challenges the sufficiency and validity of the Corps' Environmental Assessment ("EA"), Finding of No Significant Impact ("FONSI") and decision not to prepare, or require the preparation of, an Environmental Impact Statement ("EIS") pursuant to the requirements of NEPA and its implementing regulations. This action also challenges all of the Defendants' final agency actions with respect to the PROJECT under the **Administrative Procedures Act**, 5 U.S.C. §706 ("APA"). A copy of the Memorandum for Record is attached hereto as Exhibit "A."

2. The PROJECT consists of work and/or activities within Waters of the United States that are regulated by the Corps pursuant to Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbor Act of 1899. The issuance of the PERMIT is a major Federal action which requires the Corps to conduct a statutory NEPA analysis and prepare the appropriate NEPA documents.

3. The Corps conducted an Environmental Assessment for the PROJECT and made a Finding of No Significant Impact and concluded that no Environmental Impact Statement would need to be prepared. This decision, under the circumstances, is unreasonable, arbitrary, capricious and otherwise not in accordance with federal law.

4. The Corps' EA unlawfully segments and permits a small part of a single large development project to hide direct, indirect, cumulative and secondary adverse impacts and:

- a. fails to adequately identify secondary impacts of either the permitted PROJECT or the entire development;
- b. fails to adequately identify and properly evaluate alternatives for either the permitted PROJECT or the entire development;
- c. fails to adequately identify the degree of mitigation necessary to off-set the direct, indirect, cumulative and secondary impacts of either the PROJECT or the entire development;
- d. fails to adequately evaluate the direct, indirect, cumulative and secondary harm to threatened and endangered species and habitat for either the permitted PROJECT or the entire development;
- e. fails to note, acknowledge, or factor into the analysis, the five-phase, 2000 acre, 2000 – plus home, 8.5 million square foot industrial, and one-half million square foot retail Palm Beach County Biotechnology Research Park Development of Regional Impact application, and enabling Palm Beach County Comprehensive Plan, Land Development Regulation and Development Order changes made by the applicant, prior to the FONSI, in furtherance of the entire development;
- f. fails to undertake an independent analysis of the water quality certification issues; and
- g. fails to note, acknowledge or factor into the analysis the significant public outcry and controversy (including ongoing legal challenges) surrounding the potential impacts of the entire PROJECT or the entire development and the substantial question and uncertainty regarding the impact of either the permitted PROJECT or the entire development.

5. Based upon the foregoing, the Corps' wholly inadequate and legally deficient EA cannot properly form the basis for the FONSI decision, the decision not to prepare an EIS, or the decision to issue the PERMIT for the PROJECT under applicable Federal laws.

## **JURISDICTION**

6. This Court has jurisdiction over this civil action under 28 U.S.C. § 1331 (federal question); under, 5 U.S.C. §§ 702 and 706(1),(2)(A),(C),(D) (Administrative Procedure Act); under

28 U.S.C. § 1361 (action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the Plaintiffs) and pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201.

7. An actual justiciable controversy now exists between the parties in which the Plaintiffs are entitled to the relief sought herein to redress the harm Plaintiffs are suffering and would otherwise continue to suffer if such relief were not granted.

8. Defendants **UNITED STATES ARMY CORPS OF ENGINEERS** and **COLONEL ROBERT M. CARPENTER**, as the District Engineer, in his official capacity, have waived sovereign immunity pursuant to 5 U.S.C. § 702.

### **VENUE**

9. Venue is proper in this district under 28 U.S.C. § 1391(b) as the actions giving rise to this claim and its effects occur in the Southern District of Florida; 28 U.S.C. § 1391(e) because it is a civil action against an agency and/or officers or employees of an agency of the United States acting in their official capacities and under 5 U.S.C. § 703.

### **PLAINTIFFS**

10. Plaintiff Sierra Club is a non-profit corporation with approximately 700,000 members in chapters and groups in all 50 States, including approximately 30,042 members in Florida. Sierra Club's mission is to explore, enjoy, and protect the wild places of the earth and to educate and enlist humanity to protect and restore the quality of the natural and human environment. Sierra Club and its members are actively involved in species and habitat protection in Florida and throughout the country, as well as water quality, air quality and environmental justice issues. Sierra Club has been

actively working to preserve and restore the Everglades ecosystem. Sierra Club brings this action on its own institutional behalf, and also on behalf of its members, who have regularly, and will continue to, hike, fish, birdwatch, and otherwise enjoy the natural beauty and abundance of wildlife in the Everglades ecosystem, including wildlife that utilize wetlands and uplands that will be impacted by the activities authorized by defendants. The ability of Sierra Club and its members to engage in educational, recreational and advocacy activities in this area is injured by the Corps' failure to comply with the ESA, the CWA, NEPA, and the APA, because, by violating these statutes, the agency is authorizing the loss of wetlands, the reduction in wildlife numbers and habitat, the destruction of migratory birds, nests, and eggs, and is preventing the recovery of, and hastening the extinction of threatened and endangered species enjoyed by Sierra Club members. Sierra Club has submitted numerous comments with respect to this project at the Mecca Farms site.

11. Florida Wildlife Federation, Inc. ("FWF") is a private, statewide, non-profit citizen's conservation education organization. FWF was formed in 1937 and incorporated in 1946, and has more than 1000 members who either reside, own property or work in Palm Beach County. FWF and a substantial number of its members frequently engage in recreational, scientific, educational and other related field trips in an around the area where the PROJECT is permitted to be constructed. The ability of FWF and its members to engage in educational, recreational and advocacy activities in this area is injured by the Defendants' failure to comply with the CWA, NEPA, and the APA. The FWF has participated in numerous administrative, State and Federal court proceedings since its formation in 1937 in support of its mission and its members and has submitted numerous comments with respect to this PROJECT at the Mecca Farms site.

## **DEFENDANTS**

12. Defendant U.S. Army Corps of Engineers ("the Corps") is an agency of the federal government which may be named as a defendant and against which a writ in the nature of mandamus, a declaratory judgment and injunctive relief may be entered, pursuant to 28 U.S.C. §§1361, 2201 and 2202, and Fed. R. Civ. P. 57, and 65 (a). The Corps is the action agency for purposes of environmental review under the NEPA and the CWA. The Corps finding of no significant impacts ("FONSI") is final agency action for purposes of APA review. The decision to issue the PERMIT for the PROJECT is final agency action for purposes of APA review.

13. Defendant Colonel Robert M. Carpenter is the District Engineer, Jacksonville District, U.S. Army Corps of Engineers, and an officer and employee of the United States and its agency, the Department of the Army. In this capacity, Colonel Carpenter may be named as a defendant and against whom mandamus, a declaratory judgment, and injunctive relief may be entered, pursuant to 28 U.S.C. §§1361, 2201 and 2202, and Fed. R. Civ. P. 57, and 65(a).

## **INTRODUCTION**

14. This action seeks to challenge the issuance of a Federal CWA Permit for the dredging and/or filling of jurisdictional waters for a project known as the Scripps Research Institute ("SCRIPPS"). The PROJECT is located western Palm Beach County Florida. The PROJECT consists of work and/or activities within Waters of the United States that are regulated by the Corps pursuant to Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbor Act of 1899. This action also challenges the sufficiency and validity of the Corps' Environmental Assessment ("EA"), its finding of no significant impacts and its decision not to prepare, or require

the preparation of an Environmental Impact Statement (“EIS”) pursuant to the requirements of NEPA and its implementing regulations.

15. The site of the PROJECT is the Mecca Farms parcel in western Palm Beach County - west of the Loxahatchee Slough and bordering the J.W. Corbett Wildlife Management Area, adjacent to and south of the C-18 canal, all components of the Everglades Ecosystem. A copy of an aerial map of the property is attached hereto as Exhibit “B.”

16. The site is bordered to the west by the J.W. Corbett Wildlife Management Area; to the north by publicly owned conservation land (Hungryland Slough), a portion of which serves as a Regional Offsite Mitigation Area or “ROMA”(Unit 11); to the east by undeveloped private land containing extensive wetlands which have been identified as a key area important for restoration; and by the low-density residential development known as the Acreage to the South. The PROJECT site was historically part of the Hungryland Slough and predominately wetland. The ditches were constructed in place of historic flowways to drain the site in preparation for agriculture. Thus the ditches are considered Waters of the United States.

17. The site is within the range of an active woodstork colony.

18. There is an existing above ground water supply impoundment in the northeastern quadrant of the site that was created as a component of the irrigation system for the agricultural activities. There is on-going excavation occurring in the southwest quadrant of the site with approximately 40 acres of lake already excavated.

19. On October 8, 2003, The Scripps Research Institute SCRIPPS based in La Jolla, California, announced plans to open a major East Coast science center in Palm Beach County,

Florida modeled after its La Jolla campus cluster.

20. SCRIPPS' La Jolla biotechnology campus cluster includes its own research facilities, other research facilities such as the Salk Institute and the Burnham Institute, and nearly five hundred biotech companies.

21. Within Palm Beach County, several sites were cursorily assessed to accommodate not only the new SCRIPPS Florida facility, which only requires 100 acres, in and of itself, but to also allow sufficient area for the expected new biotech research centers and related businesses and residential communities that are expected to follow SCRIPPS to this location.

22. Both the State of Florida and Palm Beach County have provided economic incentive packages to establish the initial Facility. The State of Florida has or will provide \$310 million of economic stimulus funds to provide operational funding over a period of seven years, subject to specific performance requirements contained in a Funding Agreement between SCRIPPS and the State.

23. Palm Beach County has pledged to spend up to \$200 million to provide land, and buildings for the new Scripps Florida facility, and more than \$140 million to construct infrastructure to serve the project. The County has or will pay \$60 million for the 1,919.23 acre Mecca Farms site, with Scripps occupying 102.03 acres. The County will make available the remaining property to other biotech-related companies and support facilities. The Palm Beach County Biotechnology Research Park will replace all of the existing activities on the site.

24. The Corps is aware of these potential plans to develop the remaining 1,365-acres of the Mecca Farms parcel and the adjacent Vavrus Ranch, as well as to construct several new major

roads or road widenings to access the future proposed development and anticipates applications will be submitted that propose development on these sites related to the SCRIPPS PROJECT.

## **STATUTORY AND REGULATORY FRAMEWORK**

### **ADMINISTRATIVE PROCEDURES ACT**

25. Pursuant to the Federal Administrative Procedures Act, 15 U.S.C. §702, any person who has suffered legal wrong because of agency action, or who is adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof.

26. Pursuant to 5 U.S.C. §706, to the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall:

(1) compel agency action unlawfully withheld or unreasonably delayed; and

(2) *hold unlawful and set aside agency action, findings, and conclusions found to be:*

(A) *arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;*

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(D) *without observance of procedure required by law;*

(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or

(F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court can review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error. (Emphasis added).

27. An agency's finding of no significant impact and decision not to prepare an Environmental Impact Statement under NEPA is a final administrative decision reviewable under the Administrative Procedure Act. See 5 U.S.C. § 701 et seq.

### **NATIONAL ENVIRONMENTAL POLICY ACT**

28. The purpose of the National Environmental Policy Act is set forth in 42 U.S.C. § 4331:

(a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, **particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation**, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the

general welfare, *to create and maintain conditions under which man and nature can exist in productive harmony*, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this chapter, it is the continuing responsibility of the Federal Government to use *all practicable means*, consistent with other essential considerations of national policy, *to improve and coordinate Federal plans, functions, programs, and resources* to the end that the Nation may:

(1) *fulfill the responsibilities of each generation as trustee of the environment for succeeding generations*;

(2) *assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings*;

(3) *attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences*;

(4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(6) *enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources*.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to

contribute to the preservation and enhancement of the environment.  
(Emphasis added).

29. Pursuant to 42 U.S.C. § 4342, Congress created the Council on Environmental Quality (“CEQ”) for the purpose of promulgating regulations applicable to all federal agencies consistent with the intent and purposes of the Act. Those regulations are set forth in the Federal Code of Regulations at 40 C.F.R. §1500 *et seq.*

30. Pursuant to the CEQ regulations, Federal agencies are required to assess the impacts of major Federal actions to determine if those actions will significantly affect the human environment. If that environmental assessment (“EA”) document results in a finding that an action will likely adversely affect the human environment, a Federal agency is required to prepare and Environmental Impact Statement. The purpose of an EA is to determine whether the agency must prepare and EIS. 40 C.F.R. § 1501.4(b).

31. In order for the agency to conclude an EIS is unnecessary, it must make a finding that there will be **no significant impact on the human environment** from the proposed agency action. 40 C.F.R. §§ 1508.9; 1508.13. The "human environment" is defined "comprehensively to include the natural and physical environment and the relationship of people with that environment." *Id.* § 1508.14.

32. NEPA regulations provide guidance on evaluating the significance of an action's impact. Those regulations provide as follows:

"Significantly" as used in NEPA requires considerations of both context and intensity: (a) Context. This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed

action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short- and long-term effects are relevant. (b) Intensity. This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity:

(1) Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.

(2) The degree to which the proposed action affects public health or safety.

(3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

(4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.

(5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

(6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.

(7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into

small component parts.

(8) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.

(9) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.

(10) Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment. See 40 C.F.R. § 1508.27.

33. If the agencies' actions are environmentally 'significant' according to any of these criteria, then they erred in failing to prepare an EIS.

34. Although the Corps' primary function in issuing § 404 permits under the CWA is to protect the integrity of the waters of the United States, 33 U.S.C. § 1251(a), like any other federal agency taking action that could affect the human environment, its NEPA analysis in issuing a § 404 permit ***must include consideration of reasonably foreseeable, direct, indirect and cumulative impacts to the "the natural and physical environment"*** (40 C.F.R. § 1508.14), not just impacts to wetlands.

35. Cumulative impacts are impacts on the environment which results from the incremental impact of the action when added to other past, present, and ***reasonably foreseeable future actions*** regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions

taking place over a period of time. 40 C.F.R. § 1508.7.

36. Regulations implementing NEPA require that an agency consider connected actions and cumulative actions within a single EA or EIS to prevent an agency from dividing a project into multiple actions, each of which individually has an insignificant environmental impact, but which collectively have a substantial impact.

37. Neither NEPA nor the Council on Environmental Quality's regulations implementing the procedural provisions of NEPA define agencies' obligations to analyze effects of actions by administrative boundaries. Rather, the entire body of NEPA law directs federal agencies to analyze the effects of proposed actions to the extent they are *reasonably foreseeable consequences of the proposed action, regardless of where those impacts might occur*. Agencies must analyze indirect effects, which are caused by the action, are later in time or farther removed in distance, but are still reasonably foreseeable, *including growth-inducing effects and related effects on the ecosystem*, as well as the direct, indirect and cumulative effects. Council on Environmental Quality Guidance on NEPA Analyses for Transboundary Impacts, 1 July 1997.

38. An Environmental Assessment is a concise public document which has three defined functions: (1) It briefly provides sufficient evidence and analysis for determining whether to prepare an EIS; (2) it aids an agency's compliance with NEPA when no EIS is necessary, i.e., it helps to identify better alternatives and mitigation measures; and (3) it facilitates preparation of an EIS when one is necessary. 40 C.F.R. § 1508.9(a).

39. A Finding of No Significant Impact is a document in which the agency briefly explains the reasons why an action will not have a significant effect on the human environment and,

therefore, why an EIS will not be prepared. 40 C.F.R. § 1508.13.

40. If an environmental assessment indicates that the environmental effects of a proposal are significant, mitigation measures may be relied upon to make a finding of no significant impact ***only*** if they are imposed by statute or regulation, or submitted by an applicant or agency as part of the original proposal. As a general rule, the regulations contemplate that agencies should use a broad approach in defining significance and should not rely on the possibility of mitigation as an excuse to avoid the EIS requirement. 40 C.F.R. § 1508.8, 1508.27.

41. If there is sufficient public controversy surrounding the potential impacts of a federal agency action the federal agency is required to prepare an EIS. Controversy sufficient to require preparation of an EIS occurs when substantial questions are raised as to whether a project may cause significant degradation of some human environmental factor ***or there is a substantial dispute about the size, nature, or effect of the major Federal action.***

42. NEPA requires federal agencies to "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." 42 U.S.C. § 4332(2)(E). Agencies must consider alternatives in an EA.

43. The alternatives analysis is central to an environmental analysis. It should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker ***and the public.*** 40 C.F.R. § 1502.14. An agency must look at every reasonable alternative, with the range dictated by the full ***nature and scope*** of the proposed action. While the scope may be limited

to a specific independent project, the analysis of the nature of the action must include all the effects of the action. Even if the scope of the project application is limited by genuine independent utility, an alternatives analysis must include an analysis of the full scope of the proposed project and all alternatives.

44. Pursuant to the statute and regulations the Federal agency undertaking the proposed action shall be considered the lead agency for purposes of NEPA decision-making.

45. For purposes of the issuance of a Federal Clean Water Act permit to a State or individual applicant, the Corps is the lead or action agency for purposes of NEPA decision-making.

### **CLEAN WATER ACT**

46. Under the Clean Water Act, it is illegal for anyone to discharge dredged or fill material into the navigable waters of the United States without a permit except under circumstances specifically set forth under the statute and regulations.

47. The Clean Water Act, 33 U.S.C. § 1251 *et seq.*, is designed to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a)(2). Dredged or fill materials are pollutants under the CWA. *See* 33 U.S.C. § 1362(6).

48. Section 404 of the CWA, 33 U.S.C. § 1344, authorizes the Corps to issue permits to discharge or place "dredged or fill materials" into waters of the United States, including wetlands, only at specified sites and under prescribed circumstances and conditions.

49. The Section 404 program places a high priority on the control of activities that are potentially damaging to the Nation's wetlands and other waters. Regulations promulgated by the Environmental Protection Agency pursuant to section 404(b)(1) and a memorandum of

understanding between EPA and the Corps further define the Corps' duty in evaluating individual permits under CWA.

50. The 404(b)(1) Guidelines mandate a sequential review process whereby the Corps evaluates individual permits.

51. First the Corps must evaluate whether an activity is water dependent. If a proposal is not water dependant, the Corps must presume that an environmentally less damaging practicable alternative exists. *See* 40 C.F.R. § 230.10(a)(3).

52. The applicant proposing a project that is not water dependant must show that all available alternatives to the impacts resulting from the discharge of dredged or fill material have been considered, and that no practicable alternative exists which would have less adverse impact on the aquatic environment. *See* 40 C.F.R. § 230.10(a).

53. Although a particular alteration of a wetland may constitute a minor change, the cumulative effect of numerous piecemeal changes can result in a major impairment of wetland resources. Thus, the particular wetland site for which an application is made will be evaluated with the recognition that it may be part of a complete and interrelated wetland area. 33 C.F.R. 320.4.

54. If the permit applicant establishes that no less damaging, practicable alternative is available, the applicant must then show that all appropriate and practicable steps will be taken to minimize adverse impacts of the discharge onto wetlands. *See* 40 C.F.R. § 230.10(d).

55. Only after the permit applicant has shown that the avoidance and minimization criteria are satisfied can the Corps even consider mitigation.

56. In establishing mitigation requirements, the Corps must strive to achieve a goal of no

overall net loss of wetland values and functions, meaning a minimum of one-for-one functional replacement with an adequate margin of safety to reflect scientific uncertainty.

57. The Corps cannot permit a discharge if the discharge would violate other applicable laws.

58. The Corps must also *independently* determine that the project will not cause or contribute to violations of State water quality standards. *See* 40 C.F.R. § 230.10(b)(1); 40 C.F.R. § 230.10(c). This duty exists independently of any obligation of the State to determine whether a project will cause or contribute to State water quality standards under CWA Section 401.

The Corps must also fully and independently assess each project impact relating to:

(a) water circulation, fluctuation, salinity, and temperature (*see* 40 C.F.R. § 320.11 (b));

(b) the substrate underlying and surrounding the aquatic environment, including the degree and impact of soil compaction (*see* 40 C.F.R. § 320.11(a));

(c) the kinds and concentrations of suspended particulate in the aquatic environment (*see* 40 C.F.R. § 230.11(c));

(d) the degree the fill material will impact the aquatic environment (*see* 40 .F.R. § 230.11 (d));

(e) the degree of impact on the aquatic ecosystem and. organisms (*see* 40 C.F.R. § 230,11(e));

(f) the degree of cumulative effects on the aquatic environment (*see* 40 C.F.R. § 230.11 (g)); and

(g) the degree of secondary effects on the aquatic environment (*see* 40 C.F.R, § 230.11(h)).

59. Pursuant to 40 C.F.R. § 230.5, the permitting authority for any discharge of dredge or fill material under the statute must, among other things, examine practicable alternatives to the proposed discharge, that is, not discharging into the waters of the U.S. or discharging into an alternative aquatic site with potentially less damaging consequences, evaluate the various physical and chemical components which characterize the non-living environment of the candidate sites, the substrate and the water including its dynamic characteristics, identify and evaluate any special or critical characteristics of the candidate disposal site, and surrounding areas which might be affected by use of such site, related to their living communities or human uses, evaluate the material to be discharged to determine the possibility of chemical contamination, identify appropriate and practicable changes to the project plan to minimize the environmental impact of the discharge and impose zero net loss mitigation within the action area.

60. The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity and its intended use on the *public interest*. Evaluation of the probable impact which the proposed activity may have on the public interest requires a careful weighing of all those factors which become relevant in each particular case. The benefits which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments.

### **FACTS COMMON TO ALL COUNTS**

61. Mecca Farms is located in the watershed of a designated National Wild and Scenic River, the Northwest Fork of the Loxahatchee River. It is bounded on three sides by sites containing a significant number of acres of high value, natural wetlands.

62. Two of these sites, J.W. Corbett Wildlife Management Park and the Hungryland Slough are in public ownership. A portion of the Hungryland Slough known as Unit 11 is also designated as Regional Offsite Mitigation Area pursuant to Florida Law.

63. According to the public notice, the 535 acre PROJECT site contains 486.1 acre of uplands, 27.6 acres of active sand quarry, and 213 acres of jurisdictional ditches. The ditches, which are permanently inundated, drain and irrigate the surrounding orange groves. They flow into a Mecca Farms reservoir, which discharges into the west branch of the C-18 Canal, a tributary of the Northwest Fork of the Loxahatchee River.

64. The ditches contain narrow bands of littoral vegetation including cattail, water pennywort, primrose willow, and coontail. Vegetation in the quarry has been identified as including cattail, torpedo grass, maidencane, and water pennywort.

65. In July 1999, the EPA Regional Administrator, the US Army Corps of Engineers' District Engineer, and the Treasure Coast Regional Planning Council Executive Director signed the Loxahatchee River Basin Wetland Planning Project for Palm Beach County.

66. This document identified several issues of relevance to the current Scripps development proposal:

- a. The Mecca Farms and Vavrus Ranch sites are strategically located in the Loxahatchee River Basin;
- b. The Mecca Farm's site was historically underlain by Riviera sand hydric soils and the Vavrus Ranch site still contains significant, high value wetland;
- c. The Loxahatchee River suffers from reduced hydrologic flows, because connections from certain wetland systems have been diverted from the drainage basin;

- d. The river could benefit from increased water storage in the watershed and Mecca Farms was identified as a potential site for a water storage reservoir which could release water to the Northwest Fork of the Loxahatchee River during the dry season or periods of drought; and
- e. Vavrus Ranch was identified as a site with significant wetlands in need of protection.

67. The County is proposing to construct a 183 acre research institute, a 30 acre town center with commercial and multi-family residential housing, a 27 acre clinic/hospital, a 15 acre utility site, and three surface water management lakes totaling 87 acres.

68. This development would directly impact 212 acres of jurisdictional drainage ditches. Fill would be placed over 20.1 acres of ditches and dredging would occur in 32 acres of ditches.

69. Palm Beach County intends to develop the remaining Mecca Farms parcel. On or about May 10, 2004, Palm Beach County submitted an application for a Development of Regional Impact pursuant to Section 380.06 and 403.973, Florida Statutes, entitled Palm Beach County Biotechnology Research Park (“PBCBRP”).

70. On or about October 13, 2004, the Palm Beach County Commission approved six amendments to its comprehensive land use plan, approved development orders for a Development of Regional Impact for the PROJECT, rezoned the Mecca Farms property and a portion of the Corbett Wildlife Refuge, and approved changes to its Unified Land Development Code to authorize the development.

71. The County intends to locate electricity infrastructure for the development within the J.W. Corbett Wildlife Refuge and has already publicly announced plans to locate schools and other residential services as a part of the development on the Vavrus Ranch property.

72. Palm Beach County is acting as the master developer for the PBCBRP, which will feature the Scripps Research Institute as the centerpiece of the development. The site is planned as the East Coast science center for SCRIPPS. Plans for the development include agreements for high density development on all or part of the Vavrus Ranch property.

73. The Mecca Farms site was selected as the proposed location for this project based on its proximity to the adjacent Vavrus Ranch site. Agreements for sale and purchase of the adjacent Vavrus Ranch site have been executed, and development plans are proceeding for the Gardens Scientific and Technology Community (“GSTC”) on 2000 acres of Vavrus Ranch. The GSTC consists of 2 million square feet of research / office space, 350,000 square feet of retail space and 7,500 residential units. Developers have also acquired an option to purchase the remaining 2500 acres of the Vavrus Ranch which is likely to develop at similar densities and intensities as the Mecca parcel. The County has engaged in joint planning efforts to develop the Vavrus property with complementary uses to the proposed Research Park. The development of the Gardens DRI is a direct result of the County’s decision to site the Scripps Biotech Park on Mecca Farms. The development of the Vavrus Ranch with the proposed uses is unlikely to occur if the research and development uses proposed on the Mecca Farms site are not approved. The GSTC application submitted for the Vavrus property shows a master plan which is clearly intended to be integrated with the master plan for the subject site.

74. The Mecca development alone is planned to include at least the entire 1919.23 acre site currently occupied by Mecca Farms. The site plan includes a variety of land uses related to science and technology, biotechnology, biomedical research, development, and manufacturing

industries. In addition, the SCRIPPS research park will include a satellite university campus, institutional uses, residential, commercial, hotel, hospital, and community facilities such as parks, recreation, utilities, and other public services.

75. These land uses have been organized into four major districts, including the SCRIPPS District, a Town Center District, a Research and Development District, and a Neighborhood Center District.

76. The SCRIPPS District consists of 102.03 acres of land with approximately 2,000,000 S.F. of building space. This district is located in the southern portion of the development site.

77. A 364,000 S.F. biomedical research facility is planned for the first phase of development in this district. Planning, development, and construction for the first phase have already begun and are well underway.

78. This Research and Development District consists of about 514 acres with approximately 8,500,000 SF of building space. This district is located in the central portion of the PROJECT site and to the east of the SCRIPPS District. It is reserved for the development of other biotechnology related companies and support facilities that will be encouraged to locate near SCRIPPS.

79. The Town Center District consists of about 50 acres with approximately 430,000 SF of building space. This district is located immediately west of the SCRIPPS District. It will serve the residents and employees of the development. The Town Center District will include commercial, retail, office, residential, and a variety of other uses.

80. The Neighborhood Center District consists of about 134 acres and includes the

majority of the 2000 or more residential units included in the development design. This district is located in the northern portion of the development. It is intended to provide housing for employees who live and work on the development site. Similar to the Town Center District, the Neighborhood Center District will include commercial, retail, office, residential, and a variety of other uses.

81. The development also intends to include an educational/institutional component that will include a magnet high school for approximately 2,500 students and a satellite university campus for 2,000 full time students. These facilities are planned to occupy 103 acres. The northwest corner of the Neighborhood Center District has been proposed as a location for the high school. The southern portion of the site near the SCRIPPS District and Town Center District has been proposed as a location for the college campus.

82. The County has maintained publicly on numerous occasions that the entirety of the PROJECT, including its research hospital, university, and thousands of homes are absolutely necessary in order to achieve the massive biotech economic cluster the project is intended to provide.

83. The County has further publicly stated that the sole reason that they submitted the application to the Corps for less than the full extent of the proposed development was because that was the only way that the permit's issuance could be expedited, which demonstrates an intent to intentionally restrict the Corps' review to less than the full range of impacts expected to be associated with the proposed development.

84. The proposed development will include a number of community facilities, including, electric utilities to be operated by Florida Power and Light Company, and a Fire-Rescue Station and

includes the extension of water and sewer lines by the Palm Beach County Water Utilities Department.

85. The public notice states that no offsite roadway improvements are necessary for the PROJECT, however, the construction of new segments of Seminole Pratt Whitney Road and PGA Boulevard, as well as the widening of several segments of those roads as well as Northlake Boulevard and Indiantown Road are necessary requirements under State law in order to site the PROJECT on the Mecca Property, and have been planned as part of a series of comprehensive plan amendments adopted by Palm Beach County. The PROJECT would fail to meet State traffic concurrency requirements under Chapter 163, Florida Statutes if these roadway improvements were not constructed. The extension and expansion of these roadways will significantly impact wetlands. These roadway extensions and expansions have been publicly discussed on numerous occasions and have been placed on Palm Beach County's Transportation Improvements map as well as the County's Five Year Road Program and other planning documents for planning, funding and construction in the next five years.

86. A traffic study prepared by Pinder Troutman Consulting, Inc., West Palm Beach, Florida indicates that the entire development will likely increase traffic on the affected arterial roadways more than fifty fold.

87. Palm Beach County's North County Airport is near the site of the proposed development. It is probable that the type and frequency of aircraft activity at this airport will change and increase as a result of the proposed development.

88. In order to develop the biotech park, State-owned conservation land at the J.W.

Corbett Wildlife Management Area must be converted to an “accessory multi-use site” to allow roadway and canal construction for the Biotech Park.

89. The Mecca Farms parcel has been identified as a potential site for a stormwater treatment area or reservoir for restoration of the Loxahatchee River pursuant to the Comprehensive Everglades Restoration Plan. Development of the entirety of the Biotech Park on the Mecca Farms site would preclude these uses.

90. Significant offsite impacts are inevitable when the density and intensity of the proposed project is considered in conjunction with its proposed location in the immediate vicinity of tens of thousands of acres of conservation and low density rural lands in the headwaters of the federally designated wild and scenic river.

91. Among the impacts expected from the entire project are:

- a. Reduced ability to fire-manage the habitat within the JW Corbett Wildlife Management Area and Hungryland Slough;
- b. Adverse impacts from exotic pest and plants from the urban development to be placed adjacent and nearby to Corbett, Hungryland and the Loxahatchee Slough;
- c. Wildlife mortality from road-kill associated with the new and widened roads to serve the development;
- d. Bisection and fragmentation of habitat in the Hungryland Slough, Loxahatchee Slough and wetlands on the Vavrus parcel from the roads to be built or widened for the project;
- e. Noise and light pollution from the development;
- f. Cumulative impacts from similar development on the Vavrus parcel and others in the vicinity that would reasonably be expected based on the approval of the instant project; and
- g. Decreased ability to achieve restoration of the Loxahatchee River.

**COUNT I**  
**IMPROPER AGENCY ACTION**  
**VIOLATIONS OF NEPA**

Plaintiffs reallege and reaver the allegations in paragraphs 1-91 as though fully set forth herein.

92. In 2003, Palm Beach County made application to the Defendant Corps for a dredge and fill permit under the Federal Clean Water Act, 33 U.S.C. §1344 *et seq.* and the Rivers And Harbors Act of 1899, 33 U.S.C. §403, for the initial phase of the planned development.

93. Issuance of a dredge and fill permit constitutes major federal action for purposes of the **National Environmental Policy Act**, (“NEPA”) 42 U.S.C. §4321, *et seq.*

94. On or about February 22, 2005, the Defendant Corps issued Permit No.: SAJ 2004-2859 (IP-AAZ) for the PROJECT and limited their impacts evaluation under the NEPA to only a small 535 acre portion of the proposed 1900 acre development despite the fact that the Corps was aware that future development and construction activities are planned to occur in the area if the PERMIT is issued. The Corps’ PERMIT contained a NEPA finding of no significant impacts (“FONSI”) for the small 535 acre portion of the proposed 1900 acre development. Based on the following, that finding is in violation of NEPA, is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with federal law.

95. The Defendant Corps issued Permit No.: SAJ 2004-2859 (IP-AAZ) and FONSI for the PROJECT limiting their impacts evaluation under the NEPA to only a small 535 acre portion of the proposed 1900 acre development yet expanding their benefits analysis to the entire development

in violation of NEPA.

96. The Defendant Corps issued Permit No.: SAJ 2004-2859 (IP-AAZ) and FONSI for the PROJECT limiting their impacts evaluation under the NEPA to only a small 535 acre portion of the proposed 1900 acre development despite the fact that the Corps was aware that the applicant intends to develop the remaining acreage on the Mecca Farms parcel; despite the fact that the developers intend to develop the adjacent property known as the Vavrus Ranch; despite the fact that the Department of Transportation, or the County intends to construct new roads to access the future additional proposed development; and despite the fact that Florida Power and Light intends to construct new power substations - all in violation of NEPA.

97. The Corps issued the PERMIT and FONSI for the 535 acre initial phase of the development based on the improper finding that the initial phase biotechnology research park has “independent utility” from any other future development. As a direct result of this improper “independent utility” classification the Corps failed to undertake the otherwise required expanded NEPA scope of impacts analysis in violation of NEPA.

98. On or about August 10, 2004, in the case of O'Reilly v. U.S. Army Corps of Engineers, 2004 U.S. Dist. LEXIS 15787, 2004 WL 1794531, (E.D. La. 2004) the Corps, in a very similar case involving phased development and a determination of “independent utility,” was found to have violated NEPA by not thoroughly analyzing the entire scope of environmental impacts under NEPA: “The Corps acted arbitrarily, capriciously, or abused its discretion by issuing the § 404 permit without preparing a full EIS as required by NEPA. In light of the long-term and irreversible environmental impacts associated with this project, the Corp's action is wholly at odds with NEPA.”

Id. A copy of that decision is attached hereto as Exhibit “C.”

99. In light of the O’Reilly decision only six months earlier, the Corps’ decision to issue Permit No.: SAJ 2004-2859 (IP-AAZ) and the FONSI for the PROJECT and limit the scope of their impacts evaluation under the NEPA to only a small 535 acre portion of the entire development is clearly unreasonable, arbitrary, capricious, an abuse of discretion and otherwise not in accordance with federal law and in violation of NEPA.

100. As a result of the Corps’ decision to issue Permit No.: SAJ 2004-2859 (IP-AAZ) and the FONSI for the PROJECT and limit the scope of their evaluation under the NEPA to only a small 535 acre portion of the entire development, the Corps fails to adequately identify secondary impacts of either the permitted PROJECT or the entire development - in violation of NEPA.

101. As a result of the Corps’ decision to issue Permit No.: SAJ 2004-2859 (IP-AAZ) and the FONSI for the PROJECT and limit the scope of their evaluation under the NEPA to only a small 535 acre portion of the entire development, the Corps fails to adequately identify and properly evaluate alternatives for either the permitted PROJECT or the entire development - in violation of NEPA.

102. As a result of the Corps’ decision to issue Permit No.: SAJ 2004-2859 (IP-AAZ) and the FONSI for the PROJECT and limit the scope of their evaluation under the NEPA to only a small 535 acre portion of the entire development, the Corps fails to adequately identify the degree of mitigation necessary to off-set the direct, indirect, cumulative and secondary impacts of either the PROJECT or the entire development - in violation of NEPA.

103. As a result of the Corps’ decision to issue Permit No.: SAJ 2004-2859 (IP-AAZ) and

the FONSI for the PROJECT and limit the scope of their evaluation under the NEPA to only a small 535 acre portion of the entire development, the Corps fails to adequately evaluate the direct, indirect, cumulative and secondary harm to threatened and endangered species and habitat for either the permitted PROJECT or the entire development - in violation of NEPA.

104. As a result of the Corps' decision to issue Permit No.: SAJ 2004-2859 (IP-AAZ) and the FONSI for the PROJECT and limit the scope of their evaluation under the NEPA to only a small 535 acre portion of the entire development, the Corps failed to reasonably acknowledge or factor into their analysis, the impacts of the entire five-phase, 2000 acre, 2000 + home, 8.5 million square foot industrial, and one-half million square foot retail Palm Beach County Biotechnology Research Park Development of Regional Impact application and enabling comprehensive zoning and land management law changes made by the applicant, prior to the issuance of the FONSI, and in furtherance of the entire development - in violation of NEPA.

105. The Corps' Memorandum for Record and the FONSI for the PROJECT fail to make an independent analysis of the water quality certification issues - in violation of NEPA.

106. As a result of the Corps' decision to issue Permit No.: SAJ 2004-2859 (IP-AAZ) for the PROJECT and limit the scope of their evaluation under the NEPA to only a small 535 acre portion of the entire development, the Corps fails to acknowledge or factor into their analysis the significant public outcry and controversy (including ongoing legal challenges) surrounding the potential impacts of the PROJECT or the entire development and the substantial question and uncertainty regarding the impact of either the permitted PROJECT or the entire development - which controversy triggers the need for an EIS - in violation of NEPA.

**WHEREFORE**, Plaintiffs respectfully requests this Court to issue an order:

- A. Declaring the Corps' issuance of Permit No.: SAJ 2004-2859 (IP-AAZ) and FONSI violate NEPA;
- B. Declaring that the Defendants' EA and FONSI insufficient and its issuance arbitrary and capricious and in violation of NEPA;
- C. Declaring that Permit No.: SAJ 2004-2859 (IP-AAZ), based on its failed NEPA analysis is invalid;
- D. Preliminarily and permanently enjoining the Defendants from allowing the permittee to take any action which in any way supports or furthers construction or development of the PROJECT based on Permit No.: SAJ 2004-2859 (IP-AAZ) until the Defendants have remedied their violations of NEPA;
- E. Requiring the Defendants to adequately and fully analyze all impacts and reasonable alternatives to the entire proposed development project as required by NEPA and its implementing regulations;
- F. Requiring the Defendants to prepare an EIS inclusive of all reasonably foreseeable impacts of the entire probable development (the entire scope of the proposed development), including all cumulative impacts as required by NEPA and its implementing regulations;
- G. Awarding Plaintiffs their reasonable attorneys fees, costs and expenses pursuant to 28 U.S.C. §2412, the Equal Access to Justice Act and Rule 54(d), Fed.R.Civ.P.;
- H. And granting such other and further relief as the Court may deem just and proper.

## **COUNT II**

### **IMPROPER AGENCY ACTION VIOLATIONS OF CWA - USACOE**

Plaintiffs reallege and reaver the allegations in paragraphs 1-106 as though fully set

forth herein.

107. Based on the request of the permit applicant, and the Corps' ultimate decision to review and evaluate the proposed PROJECT in isolation as having independent utility, the Corps on February 22, 2005, published a memorandum of record and FONSI approving Permit No.: SAJ 2004-2859 (IP-AAZ) for the PROJECT and limited their evaluation under the NEPA to only a small 535 acre portion of the entire development. The Corps took this action despite the decision in O'Reilly v. U.S. Army Corps of Engineers, 2004 U.S. Dist. LEXIS 15787, 2004 WL 1794531, (E.D. La. 2004) only six months prior which overturned a substantially similar decision.

108. On or about August 13, 2004, the United States Environmental Protection Agency ("EPA"), in a letter to the Corps commenting on the PERMIT application, expressed concerns that the development may not comply with the Section 404(b)(1) Guidelines, the implementing regulations for Section 404 of the Clean Water Act, which require a sequential analysis of avoidance, minimization, compensatory mitigation and avoidable and/or significant adverse impacts to the aquatic environment.

109. The EPA concluded that they believed that less environmentally damaging alternatives may exist for this PROJECT which were not analyzed. Despite the EPA's concerns about the scope of the Corps analysis for PERMIT, the Corps, on February 22, 2005, issued the FONSI and the PERMIT for the small 535 acre portion of the entire development without properly analyzing the significant adverse environmental impacts of the entire proposed development in violation of the CWA. A copy of that letter is attached hereto as Exhibit "D."

110. A cumulative and secondary impacts analysis is required under applicable CWA law and regulations because the total impacts of all related projects in an action area, when combined,

may be greater than the individual local impacts of the discrete parts. The Corps' failure to require the applicant to include or consider the total cumulative and secondary impacts of the entire development is a violation of the CWA.

111. The Corps' failure to require the applicant to include or consider less damaging alternatives is a violation of the CWA.

112. The Corps decisions not to adequately and independently assess the impacts of the entire scope of the development negates its findings in the Memorandum for Record and the FONSI determination and cannot form the basis for the lawful issuance of a permit under the CWA.

**WHEREFORE**, Plaintiffs respectfully requests the following:

- A. Declare the Defendants' February 22, 2005 Memorandum of Decision was arbitrary and capricious, unsupportable, contrary to law and in violation of the CWA;
- B. Declare that the Defendants' decision not to analyze the adverse environmental impact of the entire probable development or require the applicant to prepare an EIS as a part of applying for a 404 permit was arbitrary and capricious, unsupportable, contrary to law and in violation of the CWA;
- C. Declare that Permit No.: SAJ 2004-2859 (IP-AAZ) issued pursuant to the illegal Memorandum of Decision and illegal FONSI for the PROJECT are invalid;
- D. Preliminarily and permanently enjoin the Defendants from taking any action on any new permit application for this PROJECT until they have analyzed the entire proposed development pursuant to NEPA;
- E. An Order awarding Plaintiffs their reasonable attorneys fees, costs and expenses pursuant to 28 U.S.C. §2412, the Equal Access to Justice Act and Rule 54(d), Fed.R.Civ.P.;
- F. Such other and further relief as the Court may deem just and proper.

Respectfully Submitted,

**ENVIRONMENTAL & LAND USE  
LAW CENTER, INC.**

**RICHARD J. GROSSO, ESQ.**, Florida Bar No. 0592978  
*Co-Counsel for Plaintiffs*  
Shepard Broad Law Center  
3305 College Avenue  
Ft. Lauderdale, FL 33314  
Phone: (954) 262-6140; Facsimile: (954) 262-3992  
e-mail: [grosso@nsu.law.nova.edu](mailto:grosso@nsu.law.nova.edu)

**LISA B. INTERLANDI, ESQ.**, Florida Bar No. 0146048  
330 U.S. Highway 1, Suite 3  
Lake Park, Florida 33403  
Phone: (561) 844-5222; Facsimile (561) 844-5004  
e-mail: [lisa@elulc.org](mailto:lisa@elulc.org)

**ROBERT N. HARTSELL, ESQ.**, Florida Bar No. 0636207  
330 U.S. Highway 1, Suite 3  
Lake Park, Florida 33403  
Phone: (561) 844-5222; Facsimile (561) 844-5004  
e-mail: [robert@elulc.org](mailto:robert@elulc.org)

**RUMBERGER, KIRK & CALDWELL**  
*Co-Counsel for Plaintiffs*

**EDWIN THOM RUMBERGER, ESQ.**, Florida Bar No. 69480  
108 South Monroe Street  
Tallahassee, FL 32301  
Phone: (850) 222-6550; Facsimile: (850) 222-8783  
e-mail: [trumberger@rumberger.com](mailto:trumberger@rumberger.com)

**REINER & REINER, P.A.**

*Co-Counsel for Plaintiffs*  
9100 South Dadeland Boulevard, Suite 1408  
Miami, Florida 33156-7816  
Phone: (305) 670-8282; Facsimile: (305) 670-8989  
e-mail: [dpr@reinerslaw.com](mailto:dpr@reinerslaw.com)

By: \_\_\_\_\_

**DAVID P. REINER, II, ESQ.**; Florida Bar No. 416400